

Funding and Participation Agreement Portland Harbor Injury Assessment Plan

The Portland Harbor Superfund Site is located along the lower Willamette River near Portland, Oregon. The Willamette River originates in the Oregon Cascade Range, drains a watershed area of about 11,400 square miles, and has a total length of 209 miles before its confluence with the Columbia River. From the mouth of the Willamette, the Columbia River then flows another 100 channel miles before discharging into the Pacific Ocean. The river segment between River Mile (RM) 3 and RM 10 is the primary depositional area of the Willamette River system, and contains the highly-industrialized area known as Portland Harbor.

The Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Siletz Indians of Oregon, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Nez Perce Tribe, U.S. Department of the Interior, National Oceanic and Atmospheric Administration, and the State of Oregon, collectively the Natural Resources Trustees (Trustees), have issued a Determination and Notice of Intent to Perform a Natural Resource Damage Assessment (NRDA) for the Portland Harbor Site.

The NRDA for the Portland Harbor Site will likely be conducted in a three phase approach. Phase I is the development of an Injury Assessment Plan (IAP) and implementation of 3 initial studies. Phase II is the implementation of the IAP and an estimate of injury and damages in order to prepare for early settlements and early restoration. Phase III is the final injury and damage determination and quantification.

This Funding and Participation Agreement (Agreement) is only for Phase I, the development of the IAP, along with the funding of three initial studies discussed below. After completion of the IAP, all potentially responsible parties (PRPs) will be provided the opportunity to fund and participate in the implementation of the plan itself. A separate funding and participation agreement will be prepared for the implementation part.

The Phase I Injury Assessment Plan will include the following elements:

1. An introduction
2. Statement of Trusteeship
3. Evaluation of existing characterization information (which will include a compilation of existing literature, data and other information which would be relevant for all phases of the NRDA)
4. Pathway, exposure and injury determination studies (including QA/QC) for:
 - a. Surface Water
 - b. Groundwater
 - c. Geologic resources
 - d. Air resources
 - e. Biological resources (terrestrial and aquatic)
 - f. Natural resources with cultural values
 - g. Natural resources providing recreational services
5. References

In addition to the development of the IAP, the Trustees have identified several initial studies which 1) will ultimately be required under all possible assessment approaches and 2) currently can be done in a cost efficient manner with other planned work. These are:

- Lamprey pilot study
- Osprey eggs study
- Lower Columbia River Estuary Partnership (LCREP) juvenile salmon tissue analysis

While final decisions on the IAP will be made by the Natural Resource Trustees, PRPs who choose to fund and participate in the development of the IAP (participating PRPs) will have the following involvement in the process:

- Participation in a scoping meeting which will precede the initial draft IAP
- 15-day period to review and comment on the initial draft IAP prior to its preparation for release for public comment
- Conference call with Trustees to discuss how participating PRP comments were addressed prior to the release of the draft IAP for public comment

- 15-day period to review public comments & participation in a conference call with Trustees to assess the public comments on the plan
- 15-day period to review and comment on the draft of the final plan prior to adoption
- Review and comment on the Proposed Work Plans for the initial studies, decision tree/road map document, and public participation plan

The Trustees will provide an accounting of their expenses on the IAP to the participating PRPs at the conclusion of the activities covered by this Agreement. Due to differences among Trustee accounting procedures, the form the accounting may differ among Trustees. The accounting shall consist of a spreadsheet summarizing labor (hours and rates), travel costs, equipment costs, contractors' costs and miscellaneous expenses (e.g., supplies, overnight mail).

The Trustees have made a good faith effort to estimate their costs accurately, but the participating parties recognize that the actual costs incurred by the Trustees may be more or less than the amount set forth in this Agreement. If the actual costs are greater, the Trustees retain their right to recover such costs in the future. Any funds not expended under this Agreement will be credited toward future phases. If a participating PRP determines that it will not participate in future phases, its portion of any unexpended funds will be returned, to the extent permitted by law. If a trustee is barred by law from returning the unexpended funds, that amount will be credited against that participating PRP's remaining natural resource liability.

Nothing in this Agreement shall be construed as obligating the Trustees, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

This Agreement does not release the participating PRPs from any potential liability except for the liability for the costs provided under this Agreement. Such costs are considered reasonable damage assessment costs and will be credited against a participating PRP's natural resource liability.

It is recognized that each Party to this Agreement reserves all rights, powers and remedies. It is further recognized that except as provided in this Agreement, nothing in this Agreement is intended nor shall be construed as a waiver by any party of any rights, defenses, privileges or affirmative claims in any proceeding related to natural resource liability arising from the release of hazardous substances at the Portland Harbor site. Nothing in this Agreement is nor shall be construed to be a waiver of the sovereign immunity by any of the Trustees.

The costs for activities encompassed under this Agreement are \$2,162,381. These costs are to be paid by the participating PRPs to the Department of the Interior NRDAR Fund (Fund), unless directed otherwise by the Trustees. The Fund will distribute the money to the Trustees for implementation of activities described above.